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EXAMINER

BOEHLER, ANNE MARIE M

ART UNIT PAPER NUMBER

3611

DATE MAILED: 12/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/981,246

Applicant(s)

DAVIS ET AL.

Examiner

Anne Marie M Boehler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 29, 32-34 and 38-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18, 20, 21, 23, 35-37, 47-59 is/are rejected.
- 7) ☒ Claim(s) 19, 22, 24-28, 30, 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. Claims 29, 32-34, and 38-46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 10.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,343,669.

Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the features recited in claim 1 are described in claim 1 of the prior patent.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5-13, 47-51 are rejected under 35 U.S.C. 102(b) as being anticipated by Musgrave.

Musgrave shows a straddle seat vehicle with an engine 31 having a vertical output shaft 4. A first transmission (including pulleys 47, 89, and belt 87) lies in a horizontal plane below the engine. A second transmission 93, which includes right angle gearing, is mounted next to engine and above the first transmission. Input to the second transmission is through a vertical shaft 91 and output is through a horizontal shaft 127.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 52, 55, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musgrave.

Musgrave is silent regarding the constructing the drivetrain as a modular unit and drop in mounting it in the vehicle. However, the drive train elements of the Musgrave vehicle are all mounted to a casing formed by the floor 9 with bottom 10. That combination forms a unit that is welded to the frame 3 and apparently is mounted from the top, before hood 17 is added. Therefore, it would have been obvious to construct

the floor and drive rain as a modular unit prior to mounting on the vehicle, in order to facilitate assembly.

8. Claims 4, 15, 16, 17, 21, 35-37, 53, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musgrave in view of Pestotnik.

Musgrave shows all of the claimed features except a CVT.

Pestotnik shows an ATV with an engine having a vertical shaft and a first transmission constituting a CVT 44 with first and second pulleys 42, 46.

It would have been obvious to one of ordinary skill in the art to provide the Musgrave vehicle with a CVT in place of simple V-belt pulleys, as taught by Pestotnik, in order to automatically vary the effective speed and torque ratio for effective propulsion.

9. Claims 14-18, 20, 21, 23, 35-37, 53, 54, 57-59 rejected under 35 U.S.C. 103(a) as being unpatentable over Pestotnik in view of Musgrave.

Pestotnik shows an ATV with an engine having a vertical output shaft, a first CVT transmission 44 driven by the output shaft, a second transmission 56 and a transfer device 68 directing drive to front and rear wheel horizontal drive shafts 106.

Pestotnik shows the first transmission above rather than below the engine.

Musgrave shows a vehicle having an engine with a vertical drive shaft to a first, power take-off transmission that is positioned below the engine.

It would have been obvious to one of ordinary skill in the art to provide the first transmission of Pestotnik below the engine, rather than above it, as taught by Musgrave, in order to provide better access to the engine and second transmission for maintenance purposes.

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10. Claims 19, 22, 24-28, 30, and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Minoura, Geiger, Pensa, Cowan, and Cerny show vehicle engines with vertical output shafts.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne Marie M Boehler whose telephone number is 703-308-0422. The examiner can normally be reached on 7:30-5:00, Monday-Thursday, and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703-308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

*amb* 12/12/07  
Anne Marie M Boehler  
Primary Examiner  
Art Unit 3611

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